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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION  
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11 EMMANUEL TYRONE BULL, ) No. CV 09-09023-TJH (VBK)  
12 )  
13 ) Petitioner, ) ORDER (1) ACCEPTING AND ADOPTING  
14 ) v. ) THE REPORT AND RECOMMENDATION OF  
15 ) THE UNITED STATES MAGISTRATE  
16 ) JUDGE, AND (2) DISMISSING THE  
17 ) PETITION FOR WRIT OF HABEAS  
18 ) CORPUS  
19 ) Respondent. )  
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29 Pursuant to 28 U.S.C. §636, the Court has made a de novo review  
30 of the Petition for Writ of Habeas Corpus ("Petition"), Respondent's  
31 Motion to Dismiss, Petitioner's Opposition to the Motion to Dismiss,  
32 all of the records herein and the Report and Recommendation of the  
33 United States Magistrate Judge ("Report").

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1       **IT IS ORDERED** that: (1) the Court accepts and adopts the Report  
 2 and Recommendation, (2) the Court declines to issue a Certificate of  
 3 Appealability ("COA");<sup>1</sup> (3) Respondent's Motion to Dismiss is granted;  
 4 and (4) Judgment be entered denying and dismissing the Petition with  
 5 prejudice.



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 7 DATED: December 17, 2010

8 TERRY J. HATTER, JR.  
 9 SENIOR UNITED STATES DISTRICT JUDGE

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 15       <sup>1</sup> Under 28 U.S.C. §2253(c)(2), a Certificate of Appealability  
 16 may issue "only if the applicant has made a substantial showing of the  
 17 denial of a constitutional right." Here, the Court has adopted the  
 18 Magistrate Judge's finding and conclusion that the Petition fails to  
 19 state a federal claim. Thus, the Court's determination of whether a  
 20 Certificate of Appealability should issue here is governed by the  
 21 Supreme Court's decision in Slack v. McDaniel, 529 U.S. 473, 120 S.  
 22 Ct. 1595 (2000), where the Supreme Court held that, "[w]hen the  
 23 district court denies a habeas petition on procedural grounds without  
 24 reaching the prisoner's underlying constitutional claim, a COA should  
 25 issue when the prisoner shows, at least, that jurists of reason would  
 26 find it debatable whether the petition states a valid claim of the  
 27 denial of a constitutional right and that jurists of reason would find  
 28 it debatable whether the district court was correct in its procedural  
 ruling." 529 U.S. at 484. As the Supreme Court further explained:

      "Section 2253 mandates that both showings be made before the  
 court of appeals may entertain the appeal. Each component  
 of the § 2253(c) showing is part of a threshold inquiry, and  
 a court may find that it can dispose of the application in  
 a fair and prompt manner if it proceeds first to resolve the  
 issue whose answer is more apparent from the record and  
 arguments." Id. at 485.

      Here, the Court finds that Petitioner has failed to make the  
 requisite showing that "jurists of reason would find it debatable  
 whether the district court was correct in its procedural ruling."